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No. 659

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

JOHN SANTANGELO, *Petitioner*

vs.

DOMENICA ERCOLANI SANTANGELO, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

WILLIAM L. HADDEN,
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

Petitioner prays that writ of certiorari issue to review the judgments of the Supreme Court of Errors of the State of Connecticut, entered in the case of *Domenica Ercolani Santangelo* v. *John Santangelo,* and in the consolidated companion case, *Domenica Ercolani Santangelo* v. *Giovanni Santangelo, a.k.a. John Santangelo,* on January 9, 1951.

OPINIONS BELOW

The memorandum of opinion of the Superior Court (R. 19) is unreported. The opinion of the Supreme Court of Errors of the State of Connecticut (R. 66) is reported in 137 Conn. 404, 78 Atl. (2d) 245.

JURISDICTION

The judgment of the Supreme Court of Errors of the State of Connecticut was entered on January 9, 1951 (R. 70, 71). That Court is the highest State Court in which a decision could be had. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

The question whether the respondent, a non-resident alien, could attack collaterally, in the Superior Court of Connecticut, the validity of a Nevada divorce was first raised by the petitioner in the Superior Court by a Plea to the Jurisdiction (R. 12) to which there was a demurrer, sustained by the trial court. (R. 14.)

The same claim of law respecting the judgment to be rendered was made prior to judgment in the Superior Court (R. 51), and the ruling thereon was assigned as error (Assignment 7, R. 53) in the appeal to the Supreme Court of Errors. A claim of laches was made before judgment in the trial court (R. 28) and assigned as error in petitioner's appeal. (R. 52.) The Connecticut Supreme Court held (R. 67-68) that a non-resident alien could collaterally attack, in Connecticut, a Nevada decree, despite the Full Faith and Credit Clause of the Federal Constitution, and despite the lapse of time. (R. 68.)

QUESTION PRESENTED

Does the Full Faith and Credit Clause of the United States Constitution permit a non-resident alien to attack collaterally a Nevada divorce decree in a Connecticut Court, after a lapse of more than ten years, when such an action, if successful, would destroy the legitimacy of birth of three innocent United States citizens?

CONSTITUTIONAL CLAUSE AND STATUTE INVOLVED

Full Faith and Credit Clause, United States Constitution, Article 4, Section 1.

Act of June 25, 1948, C. 646, 62 Stat. 947, 28 U. S. C. Sec. 1738.

STATEMENT

The petitioner and the respondent, both then citizens of Italy, intermarried, at the place of their residence, San Valentino, Italy, on December 27, 1920. About two years later the petitioner left Italy for Argentina, stating that he would later send for his wife. (R. 35.)

After leaving the Argentine he came to the United States in April of 1924. In January 1932 he was admitted to citizenship in the Supreme Court of New York at Yonkers. At about this time he moved to Stamford, Connecticut. (R. 36.)

On April 23, 1935 the petitioner started a divorce action in the Superior Court, Fairfield County, Connecticut, on the ground of adultery. The complaint in that action was personally served on the respondent but she never appeared or answered. That action was abandoned, and in July 1936 the defendant went to Reno, Nevada, arriving there on the night of July 20, 1936. (R. 39-40.) On September 2, 1936, six weeks and three days after his arrival in Reno, the petitioner started a divorce action against the respondent in the Second Judicial District Court of Nevada at Reno in and for the County of Washoe. (R. 41.)

The petitioner obtained an order of notice from the Nevada Court and on September 22, 1936, personal service was made on the respondent in Italy. She thus had actual notice and, as far as time was concerned, an opportunity to appear and defend. No appearance was entered for the defendant in that case and

there was no contest. On October 23, 1936, a decree of divorce was granted by the Nevada Court. (R. 43.)

On January 2, 1937, the petitioner and Carrie Altorelli were married at Harrison, New York and they have since that date, lived together in Connecticut as husband and wife. Their oldest child, Charles, had been born on July 18, 1935. On January 12, 1938, they had a second child, Elsie, and on October 3, 1942, a third child, John. (R. 39, 44-45.)

The respondent brought an action for support against the petitioner on September 20, 1945 in the Superior Court, New Haven County, Connecticut. (R. 2-4.) On August 12, 1948, she instituted a divorce action in the same court. (R. 54-55.) The two cases were consolidated and tried together. (R. 35) The Superior Court of Connecticut held that the Nevada decree was not entitled to Full Faith and Credit in Connecticut because the petitioner had not intended to make Nevada his home nor did he intend to establish his domicile there. (R. 48.) The Superior Court gave judgment for the plaintiff (respondent here) in both cases. (R. 31-32, 61-63.)

The petitioner appealed to the Supreme Court of Errors of the State of Connecticut in both cases. (R. 32, 63.) The appeals were consolidated and there is one record (R. 34, 64) and one memorandum of decision of the court below. (R. 66.)

The court below held that there was no error in either case on the ground that the petitioner had not established a domicile in Nevada nor abandoned his Connecticut domicile and therefore the Nevada Court lacked jurisdiction. (R. 67.) The Connecticut Supreme Court further held that an alien non-resident had the same right as a Connecticut resident to attack collaterally the validity of a judgment in another state on the ground that the Court had no jurisdiction. (R. 68.)

REASONS FOR GRANTING THE WRIT

I

The decision of the Connecticut Supreme Court of Errors is in conflict with the decisions of this Court requiring state courts to give "judgments within the jurisdiction of the rendering state the same faith and credit sister states as they have in the state of the original forum. The faith and credit given is not to be niggardly but generous, full. Local policy must at times be required to give way, such is part of the price of our federal system." *Johnson* v. *Muelberger,* U. S. March 12, 1951; *Sherrer* v. *Sherrer,* 334 U.S. 343; 355; *Williams* v. *North Carolina,* (1942) 317 U. S. 287, 301, 303; *Davis* v. *Davis,* 305 U. S. 32, 40.

The Court below cites, as its authority for denying full faith and credit to the Nevada decree, *Williams* v. *North Carolina,* (1945) 325 U. S. 226. However, that case does not say that a state court may, so to speak, seize upon an opportunity to examine the jurisdictional facts involved in a judgment of another state. On the contrary, Mr. Justice Frankfurter, writing for the majority in the *Williams II* case said, "as to the truth or existence of a fact, like that of domicile, upon which depends the power to exert judicial authority, a State not a party to the exertion of such judicial authority in another state but *seriously affected* by it has a right, when asserting its own unquestioned authority, to ascertain the truth or existence of the crucial fact." 230. (Italics added.)

The opinion goes on to say, 232, "[T]o endow each state with controlling authority to nullify the power of a sister State to grant a divorce based upon a finding that one spouse had acquired a new domicile within the divorcing state would, in the proper functioning of our Federal system, be . . . indefensible."

The only basis that has ever been asserted to give one state the power to invalidate a judgment of a sister state is the right

of a state to deal with the legal relations of its own citizens in which it has an interest, and to enforce its own public policy in matters that concern it. See dissenting opinions of Mr. Justice Murphy, 317 U. S. 310, Mr. Justice Jackson, 317 U. S. 313, 319, Mr. Justice Frankfurter, 334 U. S. 351, 352. Also, *Andrews* v. *Andrews,* 188 U. S. 14; *Fall* v. *Easton,* 215 U. S. 1; *Alaska Packers Assoc.* v. *Industrial Acc. Comm.,* 294 U. S. 532; *Rice* v. *Rice,* 336 U. S. 674.

In the present case the respondent is not a citizen of Connecticut nor of the United States. (R. 2, 35.) The petitioner and the respondent have never lived in Connecticut nor in the United States as man and wife. (R. 35-36.) The State of Connecticut is not here seeking to enforce its criminal laws as was North Carolina in *Williams I,* and *Williams II, supra.* The State of Connecticut, by its mandate in this case has in no way preserved marital relations its policy declared binding; it has not protected rights of its citizens, nor saved its public from a public charge. On the contrary the judgments the petitioner asks this court to review have destroyed the marriage (R. 44) of citizens of the United States, which full faith and credit would have preserved, and made bastards of three innocent citizens whose status would have been protected by a proper obedience to the Constitution of the United States. (R. 39, 45.) All this to end a marriage already ended by a sister state more than ten years earlier. (R. 43, 61-63.)

II

This case involves important issues in the adjustment of the domestic-relations laws of the several states, the clarifying of which this Court has recognized as of grave necessity in a long line of decisions ending with *Johnson* v. *Muelberger, supra,* and including *Williams* v. *North Carolina I and II.* For cases since the *Williams* cases and up to 1948 see *Annotation, "Recognition*

as to marital status of foreign divorce decree attacked on ground of lack of domicil, since Williams decision." 1 A.L.R. (2d) 1385.

That the desired result of settled rules has not yet been accomplished is illustrated by the dissenting opinions in *Williams* v. *North Carolina, I and II, supra; Sherrer* v. *Sherrer, supra; Rice* v. *Rice, supra; Coe* v. *Coe,* 334 U. S. 378, and *Estin* v. *Estin,* 334 U. S. 541. The petitioner submits that the present case is representative of a class of cases in the category of *Johnson* v. *Muelberger, supra, Sherrer* v. *Sherrer, supra,* and *Coe* v. *Coe, supra,* marked by a tendency of state Courts to enlarge the field of cases in which one state may scrutinize jurisdictional facts and invalidate, for its own purpose, judgments of sister states. Alien plaintiffs may not appear frequently in our courts with similar claims, but non-residents will, and, as Mr. Justice Rutledge said in his dissent in *Williams* v. *North Carolina, II, supra,* at page 252:

> "It cannot be assumed that the matter will affect only a few. For this has become a nation of transient people. Lawyers everywhere advise for or against divorce and courts grant or deny it, depending not on the probability that the case will come here, but on what is done here with the few cases which do come."

See also, 37 Am. Bar Assoc. Journal 107, (Feb. 1951).

III

> "It can no longer be said that public policy requires non recognition of all irregular foreign divorces. We have recognized that the interest of the state in many situations may be with recogintion of such divorces and preservation of remarriages rather than a dubious attempt to resurrect the original. From a pragmatic viewpoint judicial invalidation of irregular foreign divorces and attendant remarriages, years after both events, is a less than ineffective sanction against an institution whose charm lies in its immediate respectability."

Goodloe v. *Hawks,* 113 F. (2d) 753.

The correct policy of the State of Connecticut in the present case is not to permit a non-resident alien to invalidate the Nevada decree and consequently bastardize the children of the second marriage, but rather to refuse to permit such a non-resident alien to bring such a suit in Connecticut. See *Gildersleeve* v. *Gildersleeve*, 88 Conn. 689, 698.

Here the contest was between an alien and a citizen. At stake was the legitimacy of three innocent citizens. Had the Connecticut court given to the decree of a sister state that full faith and credit required by the Constitution and the decisions of this Court, it would have left it to the alien to make her attack, on a judgment of a Nevada Court, in Nevada. The State of New York has reached results in accord with Constitutional Full Faith and Credit in similar situations where it has held that only to protect its own citizens would it apply its principle of non recognition of foreign divorces granted on grounds not recognized in New York. *Hubbard* v. *Hubbard*, 228 N. Y. 81, 126 N.E. 508; *Ball* v. *Cross*, 231 N.Y. 329, 132 N.E. 106; *Powell* v. *Powell*, 211 App. Div. 750, 208 N.Y.S. 153. See also *Curley* v. *Curley*, 120 F. (2d) 730.

> "Any person may be precluded from questioning the validity of a divorce decree if under all of the circumstances his conduct has . . . for any . . . reason been such as to make it inequitable to permit him to deny the validity of the divorce decree."
>
> Restatement of Law, 148 Supplement, Sec. 112 C.

The court below dealt with the claim of laches by saying that if the second spouse of a divorced person is not innocent, she or he is not entitled to much consideration in equity. (R. 69.) The memorandum of decision does not so much as mention the existence of three unquestionably innocent children. The destruction of the legitimacy of these children gives rise to a proper claim of laches, *Mills* v. *Mills*, 119 Conn. 612, 621. The State of Connecticut has an interest in the status of these minor children.

Connecticut clearly holds that when such a question of public policy is involved the rights as between the parties are subservient to the interest of the state. *Beit* v. *Beit,* 135 Conn. 195, 200.

The Reno divorce was over ten years old when the respondent first sought to upset it (R. 68) and the doctrine of laches should have been applied by the Court below. *Dry* v. *Rice,* 147 Va. 331, 137 S.E. 472; *Swift* v. *Swift,* 239 Iowa 62, 29 N.W. (2d) 535. Even more force is added to this claim when it is realized that the only thing gained by the plaintiff in the proceedings below was money. She had already been divorced by the judgment of the Nevada Court. There is nothing in the record to indicate that the Connecticut decree is of any more force in the place of the respondent's domicile than was the Nevada decree. Her action should have been barred in Connecticut by lapse of time. *Hooker* v. *Hooker,* 130 Conn. 41, 51; *Bussey* v. *Bussey,* 95 N.H. 349, 64 A (2d) 4; *Gioia* v. *Gioia,* 245 App. Div. 373, 282 N.Y.S. 852.

CONCLUSION

For the foregoing reasons this petition for writ of certiorari should be granted.

March 30, 1951.

Respectfully submitted,
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